

Submitted by: Beus Gilbert, PLLC
4800 N Scottsdale Rd.
Suite 6000
Scottsdale, AZ 85251

Submitted for: Ron and Melanie Six

The City Council may authorize an ESLO Hardship Exemption if all the following criteria are met.

1. Demonstrated Substantial Hardship that would reduce the ability to use the parcel(s):

The existing residence on the subject property was permitted and constructed in 2001. The subject parcel is impacted by a small wash running in a northeast to southwest direction in the northern half of the parcel. With this unique constraint on the property, the land on the north side of the wash was designated as NAOS. While only the required 25% of the parcel size was designated NAOS, a larger area of land exists north of the wash and has been preserved in a manner similar to that in the NAOS. In order to locate the residence the furthest away from the NAOS and the wash, it was placed at the minimum required 20' side setback of the eastern property line. At the time the home was constructed, there was no setback requirement for walls and although one could have been built on the property line, no walls or fences were installed at that time. Currently, the property owners would like to construct a pool in their back yard. As you can see with the included site plan exhibit, with the placement of the residence, the location of the wash, and the setback requirements, there remains only approximately 2,100 square feet of usable back yard space on the one acre parcel to place a pool and its associated improvements. With this in mind, the best location for a pool would be on the eastern side of the back yard, near the eastern property line. Current Scottsdale code allows for a 2' foot side setback for a pool, however pursuant to the adopted building code, a barrier fence/wall is also required. The 2004 ESL Ordinance's requirement that a wall not be placed within 15' of a side property line would essentially preclude the property owner from placing a pool and a solid privacy/barrier wall, within 15' of the eastern edge of their property. This would force the property owner to place the pool in the middle of the their backyard.

The property owner could re-allocate their NAOS into the required 15' side setbacks, which equals approximately 3,500 square feet. While this would theoretically free up land area for the pool in the back yard, this area would be located in or directly adjacent to the wash, where a pool could not reasonably be placed. Given the topography of the parcel, the NAOS is provided where it serves the greatest purpose and should remain there. Strict enforcement of the 15' setback requirement in the current 2004 ESL Ordinance would essentially require nearly 33% of the site to be preserved, as open space.

As the house was sited prior to the 2004 edition of the ESL Ordinance, and given the current terrain constraints on the subject property, the restrictions in the current version of the ESL Ordinance would appear to unduly restrict the owners from using their

property, and penalize them for providing a NAOS easement in the most logical and beneficial location.

2. The requested exemption is consistent with the intent and purpose of the ESL Ordinance:

The 2004 ESL Ordinance includes twelve paragraphs which list out the purpose of that Ordinance, but generally the intent is to identify and protect environmentally sensitive lands. In lieu of asking for a complete hardship exemption, from not being able to place walls within 15' of a side property line, the property owners are asking for a reduction of that requirement on the east side of the property only. The west side and rear walls, will be placed 15' or farther away from the property lines in accordance with the 2004 ESL Ordinance. On the eastern side of the property, the owner is proposing a wall that will step back from a 5' setback to the full 15' setback at its northern most point. This will allow the property owners to enclose their yard and comply with the swimming pool barrier requirements while still being consistent with the intent and purpose of the ESL Ordinance, contained within those 12 paragraphs located in section 6.1011.

3. The application of the new ESLO standards does not achieve significant benefit for protection of the environment and community:

Currently the subject parcel has a 10,750 square foot NAOS on the northwest portion of the site. This NAOS links to large NAOS tracts on the adjacent parcels to the west and southwest. The eastern edge of the subject property, which is the subject of this request for a hardship exemption, has previously been heavily disturbed and is not in a natural state. If strict compliance with the 2004 ESL Ordinance is adhered to, it will create a 15' wide no-mans-land, which would not be a significant natural and visual resource worth preserving and would not assist in retaining the visual character of the natural landscape. These two goals of the ESL Ordinance, as well as the goal to maintain open spaces and view corridors, is being accomplished in a more effective situation, on the west side of the subject property, with the existing large NAOS easements both on and off the subject parcel. The property owner does not wish to receive a hardship exemption on this west side of their property, so the full 15' setback requirements will be adhered to within these areas in full support of the goals and purpose of the ESL Ordinance. Retaining a 15' setback on the eastern property line, to preserve a corridor showcasing disturbed land would not appear to be a significant benefit to the community and environment.

4. The requested exemption is in conformance with a previously adopted version of the ESL Ordinance:

If this exemption were to be approved, the property would still be in conformance with the 2003 version of the ESL Ordinance. In fact the property owner is proposing a compromise that will place the property in full compliance with the current ESL, on all areas of the property with the exception of the eastern property line, which as stated, would be in compliance with the previously adopted version.

